

ABSTRACT

Anyone can provide a name or designation or a brand that is easy to remember or nice to hear or a distinctive or special brand. But the most important thing is how to make the brand acceptable to consumers or the market. Because they are too busy with production and mark building, trademark owners often think that trademark protection by registering the mark with the Directorate of Trademarks is not necessary, perhaps due to registration fees or the complexity of registration. Until one day the product is successfully accepted by the market, the brand is well known, and suddenly someone else has registered the mark, of course with bad faith. As happened with the dispute over the Tancho, Aqua, Ayam Geprek Benu brands, and most recently the Tempo Gelato dispute. The enactment of Law Number 20 of 2016 concerning Trademarks and Geographical Indications still does not / does not provide legal certainty, benefit and justice.

The purpose of this research is to examine and analyze the regulations regarding registration of brands and sanctions for violations; examine and analyze the factors which constitute a weakness in the trademark law; and reconstructing sanctions arrangements based on the values of justice. This study uses a constructivist paradigm with a juridical empirical approach, and data analysis using qualitative descriptive analysis.

From the results of the study, it was found that the current trademark registration system, using a constitutive principle (first to file), is often used by parties who do not have good intentions to register an existing trademark or someone else's mark. Only by registering the mark with the Directorate of Trademarks will the owner of the mark have special rights and are protected by law. This deviates from the purpose of regulating intellectual property rights. The regulation of intellectual property rights hopes that people do not have the courage to copy / imitate other people's works so that they want to create their own works, so that society becomes smart, so that if they are smart, many works will be created, the more works, the people's welfare will increase. This is the weak point of Law Number 20 of 2016, because people who have more rights are not protected, or because the regulations are too narrow, which hinders the creativity of society in developing intellectual work.

The legal reconstruction that will be suggested is the regulation on the registration system, as well as the regulation on the sanctions. So it is expected that the regulation of the brand is more based on the values of justice.

Keywords: Registration of Trademark Rights, Intellectual Property Rights, Justice